

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY,

Complainant,

v.

CASE NO. 2018-DB-0011D

JUSTIN WHETZEL, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter referred to as “the Board”) and Justin Whetzel, DDS (hereinafter referred to as “the Respondent”), *pro se*, for the purpose of agreeing to disciplinary action which shall be taken against the Respondent by the Board.

WHEREAS, the Respondent acknowledges that the Board has served the Respondent with a Statement of charges against his license, alleging that he has violated certain provisions of W. Va. Code §§ 30-4-1, *et seq.*, and W. Va. Code R. §§ 5-5-1, *et seq.*, which acts if proven to be true, would constitute professional negligence and/or a willful departure from accepted standards of professional conduct in the dental profession, which would be grounds for disciplinary action.

WHEREAS, the parties mutually desire to settle the issues without further prosecution and a formal hearing; and

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of claims disputed by the Respondent;

THEREFORE, it is hereby STIPULATED and AGREED between the undersigned parties that this matter be settled and resolved, the parties having reached an understanding

concerning the proper disposition of the matter in controversy. The Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT:

1. The Board is a state entity created by W. Va. Code §§ 30-4-1, *et seq.* (Dental Practice Act), and is empowered to regulate the practice of dentistry in the State of West Virginia.

2. At all times relevant to this investigation, the Respondent was a licensee of the Board, holding License No. 4101. As a result, the Respondent is subject to the Board's rules and regulations.

3. On or about April 11, 2018, the Board received a complaint from one of the Respondent's patients, hereinafter referred to as RMI.

4. RMI went to the Respondent's office on July 17, 2017, as a new patient for purposes of having a problematic tooth checked and being fitted for a new partial. The Respondent extracted the tooth.

5. RMI returned to the Respondent's office approximately four more times for the casting and fitting of a partial denture.

6. The final partial did not fit, despite the Respondent's efforts to make it do so.

7. The Respondent referred RMI to have an implant placed to improve retention of the partial.

8. RMI went to the place of referral but sought to have them fit the partial and did not seek placement of an implant. RMI did not want an implant.

9. The Respondent asserts that he repeatedly told RMI that the partial would not stay in place due to his lack of teeth in the upper right jaw to hold the partial in place.

10. The Respondent asserts he repeatedly recommended placement of an implant to RMI to improve retention of the partial denture.

11. The Respondent asserts that there is nothing wrong with the partial itself, that it will not stay in place due to RMI's lack of teeth in the upper right quadrant.

12. RMI's treatment records which the Board subpoenaed from the Respondent have no notations by the Respondent or any of his staff that RMI was verbally informed that the finished partial would not have adequate retention due to the absence of teeth to hold it in place or that an implant was recommended to improve retention. Additionally, RMI's treatment records do not contain a signed informed consent form indicating that the patient was informed of this information and consented to treatment.

13. Based upon the foregoing, the Board found probable cause that the Respondent violated the standard of care in the practice of dentistry, by failing to obtain informed consent from the patient and by failing to maintain adequate patient records, in violation of W.Va. Code § 30-4-19(g)(12), and *ADA Code* §§ 1.A, 1.B.

CONCLUSIONS OF LAW:

1. The Respondent is a licensee of the Board and is subject to its licensing requirements.

2. The Board has jurisdiction to take disciplinary action against the Respondent.

3. Dental professionals have a duty to inform their patients of the proposed treatment, and any reasonable alternatives, in such a manner that allows the patient to become involved in treatment decisions. Failure to do so constitutes unprofessional conduct as contained in the *American Dental Association's Principles of Ethics & Code of Professional Conduct (ADA Code)*, § 1.A, in violation of W.Va. Code § 30-4-19(g)(12).

4. Dental professionals likewise have a duty to maintain patient records in a manner consistent with the protection of the welfare of the patient including, but not limited to, properly documenting the patient's file and/or having the patient sign an informed consent form. *ADA Code* § 1.B, in violation of W. Va. Code § 30-4-19(g)(12).

5. The Respondent does not contest that the Board has probable cause to charge him with one or more violations of the Dental Practice Act and the *ADA Code* with regard to this matter.

6. Pursuant to W. Va. Code § 30-4-19(g), the Board may deny, refuse to renew, suspend, restrict, or revoke a license, certificate or permit of, or impose probationary conditions upon or to take disciplinary action against, any licensees, certificate holder or permittee for violations of the Dental Practice Act, including violations of the *ADA Code*.

7. Disciplinary action may include (1) reprimand; (2) probation; (3) restrictions; (4) suspension; (5) revocation; (6) administrative fine not to exceed \$1,000 per day per violation; (7) mandatory attendance at continuing education seminars or other training; (8) practicing under supervision or other restrictions; or (9) requiring the licensee or permittee to report to the Board on a periodic basis. W. Va. Code § 30-4-19(h).

8. In addition to any other sanctions imposed, the Board may require a licensee or permittee to pay the costs of the proceeding. W. Va. Code § 30-4-19(i).

CONSENT OF LICENSEE:

The Respondent, by affixing his signature hereto, acknowledges the following:

1. Respondent has been provided the opportunity to consult with counsel and executes this negotiated *Consent Decree and Order* voluntarily, freely, without compulsion or duress, and is mindful that it has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to enter into this negotiated *Consent Decree and Order* other than as set forth herein.

3. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently, knowingly and voluntarily waives such rights.

4. Respondent expressly acknowledges that the entire agreement is contained in this *Consent Decree and Order* and no representations, promises or inducements have been made by or to the Respondent other than as appear herein.

5. Respondent acknowledges that this *Consent Decree and Order* is a public document available for inspection by the public in accordance with the provisions set forth in the West Virginia Freedom of Information Act (W. Va. Code §§ 29B-1-1, *et seq.*), and may be reported to other government agencies, professional boards or other organizations.

6. Respondent acknowledges that this *Consent Decree and Order* will be presented to the Board as soon as practical but no later than the next scheduled meeting of the Board, with a recommendation for approval from the Complaint Committee.

7. Respondent consents to the entry of this Order affecting his license in the State of West Virginia.

8. Respondent, by affixing his signature hereon, consents and agrees to the following terms and conditions:

ORDER

The Board agrees to forego further prosecution of this matter, pursuant to the Consent Decree entered between the Board and Respondent, Justin Whetzel, DDS, and hereby ORDERS as follows:

1. The Respondent shall receive a reprimand.
2. Within six (6) months of the date of this *Consent Decree and Order*, the Respondent shall enroll in and successfully complete the following nine (9) hours of professional education: three (3) hours in recordkeeping, three (3) hours in risk management, and three (3) hours in treatment planning for prosthodontic treatment. Any such professional education courses must be preapproved by the Board. The Respondent shall submit written verification to the Board of his enrollment in and successful completion of the coursework. Such professional education courses shall be in addition to the Board's biennial continuing education requirements for licensed dentists as set forth in W. Va. Code R. § 5-11-3.
3. The Respondent shall pay a fine in the amount of One Thousand Dollars (\$1,000.00) within sixty (60) days of the date of entry of this *Consent Decree and Order*. If the Respondent reimburses the patient RMI the sum of \$466.00 and provides written proof thereof to the Board within thirty (30) days of the date of entry of this *Consent Order*, the fine imposed under this paragraph 3 shall be vacated.
4. The Respondent shall reimburse the Board for all costs it has incurred in the investigation and disposition of this matter, not to exceed the sum of One Thousand Five Hundred Dollars (\$1,500.00). Said sum shall be paid within sixty (60) days of the date of entry of this *Consent Decree and Order*, or within such additional time as may be authorized in writing by the Board.

5. The Respondent's failure to fully comply with the terms and conditions of this *Consent Decree and Order* shall be deemed a violation hereof. If the Respondent violates any of the within terms, the Board may take further disciplinary action against the Respondent's license including, but not limited to, suspension and/or revocation.

6. The Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations.

7. This *Consent Decree and Order* shall remain in effect until all of its terms have been completed, the fine and costs set forth in paragraphs 3 and 4 are paid, and the professional education obligations set forth in paragraph 2 of this Order are fulfilled.

ENTERED this 19 day of September, 2019.

WEST VIRGINIA BOARD OF DENTISTRY

By:


SAMUEL V. VELTRI, DDS, President

PPS

INSPECTED AND AGREED TO BY:


JUSTIN WHETZEL, DDS, *pro se*
Respondent